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10/589,958	08/18/2006	Yuichi Idehara	1163-0579PUS1	1060
2292	7590	01/11/2008	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			VO, CECILE H	
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FALLS CHURCH, VA 22040-0747			PAPER NUMBER	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

10/589,958

Applicant(s)

IDEHARA ET AL.

Examiner

/Cecile Vo/

Art Unit

2169

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/18/2006</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This is a non-final Office Action in response to the present US application number 10/589,958, filed on 08/18/2006, which is a national stage entry of PCT/JP04/02541 International Filing Date: 03/02/2004.

2. Claims 1-9 are presented for examination, with claims 1, 6, 7 and 8 being independent.

### ***Specification***

3. The abstract of the disclosure is objected to because it does not include a brief narrative of the disclosure. Correction is required. See MPEP § 608.01(b).

4. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

### ***Claim Objections***

5. Claim 8 is objected to because of the following informalities: the term "an RTSP communication unit" should be clarified. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-5, 6, 7 and 8-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-5, 6, 7 and 8-9 are directed to a system comprising software per se.

Software per se is not a series of steps or acts and thus is not a process. Software per

se is not a physical article or object and as such is not a machine or manufacture. Software per se is not a combination of substances and thus, is not a composition of matter. Therefore, software per se is not one of the four categories of invention.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Shinohara, US Patent Number 7,310,514 B2.

Regarding claim 1, Shinohara discloses a media delivering apparatus which delivers media data to a media receiving apparatus by way of a network, characterized in that said apparatus comprises:

a parameter acquiring unit for acquiring at least one of a communication capability of said network, and a receiving capability of said media receiving apparatus (e.g. MMS servers 50<sub>1</sub>-50<sub>3</sub>, Fig. 3, store multimedia messages by media type, col. 5, lines 59-60. Wherein, all types of multimedia messages may be held in a single MMS server, col. 5, lines 65-66);

a media selecting unit for selecting media data to be delivered based on both a degree of media importance assigned to each of said media data and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus (e.g. mobile telephone 10<sub>1</sub> notifies MMS user database server of information regarding the formats for each media type of the multimedia message, col. 6, lines 62-67);

a transmission-data generating unit for generating metadata in which both address information indicating a location of said selected media data and presentation layout information indicating a presentation layout of said media receiving apparatus which is determined based on both the degree of media importance of said selected media data and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus are described (e.g. MMS user database server 30 determines whether the multimedia message that is to be transmitted by mobile telephone, col. 7, lines 5-22);

a data transmitting unit for delivering said metadata to said media receiving apparatus by way of said network (e.g. the user of mobile telephone 10<sub>1</sub> modify the data format and then transmit the multimedia message, col. 7, lines 16-17); and

a media communication unit for delivering said media data in response to a request from said media receiving apparatus which has received said metadata (e.g. the user of mobile telephone 10<sub>1</sub> may modify the data of formats and then the multimedia message, col. 7, lines 31-34).

Regarding claim 2, Shinohara further discloses the media delivering apparatus, characterized in that said apparatus comprises a importance change monitoring unit for changing said degree of media importance in response to a change indication for changing said degree of media importance, and for notifying the change in said degree of media importance to the media selecting unit, and characterized in that said media selecting unit selects the media data to be delivered based on both the changed degree of media importance and at least the one of the communication capability of the network and the receiving capability of the media receiving apparatus, the transmission-data generating unit generates the metadata in which both the address information indicating the location of said selected media data which is selected based on both the changed degree of media importance and the presentation layout information indicating the presentation layout of said media receiving apparatus which is determined based on both the changed degree of media importance of said selected media data and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus are described, and the data transmitting unit delivers said changed metadata (col. 6, lines 29-38).

Regarding claim 3, Shinohara further discloses the media delivering apparatus, characterized in that said apparatus comprises a importance change monitoring unit for changing said degree of media importance in response to a change indication for changing said degree of media importance, and for notifying the change in said degree of media importance to the media selecting unit, and characterized in that said media

selecting unit selects the media data to be delivered based both the changed degree of media importance and at least the one of the communication capability of the network and the receiving capability of the media receiving apparatus, the transmission-data generating unit generates a change command for changing the metadata which is generated before said degree of media importance is changed based on both the changed degree of media importance and at least the one of the communication capability of the network and the receiving capability of the media receiving apparatus, and the data transmitting unit delivers said change command (col. 7, lines 22-50).

Regarding claim 4, Shinohara further discloses the media delivering apparatus, characterized in that the transmission-data generating unit describes metadata including synchronization information indicating a timing for switching between screen displays in the media receiving apparatus in the metadata (col. 7, lines 23-25).

Regarding claim 5, Shinohara discloses the media delivering apparatus, characterized in that the transmission-data generating unit describes metadata including conditional branching information about at least the one of the communication capability of the network and the receiving capability of the media receiving apparatus which are used for determining the presentation layout of the media receiving apparatus (col. 7, lines 1-21).



Regarding claim 6, Shinohara discloses a media delivering apparatus which delivers media data to a media receiving apparatus by way of a network, characterized in that said apparatus comprises:

a parameter acquiring unit for acquiring at least one of a communication capability of said network, and a receiving capability of said media receiving apparatus (e.g. MMS servers 50<sub>1</sub>-50<sub>3</sub>, Fig. 3, store multimedia messages by media type, col. 5, lines 59-60. Wherein, all types of multimedia messages may be held in a single MMS server, col. 5, lines 65-66);

a media selecting unit for selecting media data to be delivered based on both a time-varying degree of media importance which is assigned to each of said media data, and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus (e.g. mobile telephone 10<sub>1</sub> notifies MMS user database server of information regarding the formats for each media type of the multimedia message, col. 6, lines 62-67);

a transmission-data generating unit for generating metadata in which both address information indicating a location of said selected media data and presentation layout information indicating a presentation layout of said media 10 receiving apparatus which is determined based on both the time-varying degree of media importance of said selected media data and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus are described (e.g. MMS user database server 30 determines whether the multimedia message that is to be transmitted by mobile telephone, col. 7, lines 5-22);

a data transmitting unit for delivering said metadata to said media receiving apparatus by way of said network (e.g. the user of mobile telephone 10<sub>1</sub> modify the data format and then transmit the multimedia message, col. 7, lines 16-17); and

a media communication unit for delivering said media data based in response to a request from said media receiving apparatus which has received said metadata (e.g. the user of mobile telephone 10<sub>1</sub> may modify the data of formats and then the multimedia message, col. 7, lines 31-34).

Regarding claim 7, Shinohara discloses a media delivering apparatus which delivers media data to a media receiving apparatus by way of a network, characterized in that said apparatus comprises:

a parameter acquiring unit for acquiring at least one of a communication capability of said network, and a receiving capability of said media receiving apparatus (col. 5, lines 65-66);

a media selecting unit for selecting media data to be delivered based on both a time-varying degree of media importance which is assigned to each of said media data, and at least the one of said communication capability of said network and said receiving capability of said media receiving apparatus (col. 6, lines 62-67);

a transmission-data generating unit for generating initial metadata at a time of start of presentation, in which both address information indicating a location of said selected media data and presentation layout information indicating a presentation layout of said media receiving apparatus which is determined based on both the time-varying

degree of media importance of said selected media data and at least the one of 10 said communication capability of said network and said receiving capability of said media receiving apparatus are described, and for generating a change command for changing said initial metadata according to a variation with time of said degree of media importance (col. 7, lines 5-22);

a data transmitting unit for delivering said initial metadata and said change command to said media receiving apparatus by way of said network (e.g. the user of mobile telephone 10<sub>1</sub> modify the data format and then transmit the multimedia message, col. 7, lines 16-17); and

a media communication unit for delivering said media data based in response to a request from said media receiving apparatus which has received said initial metadata and said change command (e.g. the user of mobile telephone 10<sub>1</sub> may modify the data of formats and then the multimedia message, col. 7, lines 31-34).

Regarding claim 8, Shinohara discloses a media receiving apparatus which receives media data delivered thereto by way of a network, characterized in that 25 said apparatus comprises:

a data receiving unit for, based on both a degree of media importance assigned to each of said media data and at least one of a communication capability of said network and a receiving capability of said media receiving apparatus, receiving metadata in which both address information indicating a location of media data to be delivered and presentation layout information indicating a presentation layout of said

media receiving apparatus are described (e.g. MMS servers 50<sub>1</sub>-50<sub>3</sub>, Fig. 3, store multimedia messages by media type, col. 5, lines 59-60. Wherein, all types of multimedia messages may be held in a single MMS server, col. 5, lines 65-66);

a data analyzing unit for analyzing said metadata received by said data receiving unit (col. 6, lines 1-6);

an RTSP communication unit for making a request for delivery of said media data based on the address information described in said metadata analyzed by said data analyzing unit (e.g. request mail server 150 for reception, col. 1, lines 50-58);

a media receiving unit for receiving the media data delivered to said media receiving apparatus (e.g. MMS servers 50<sub>1</sub>-50<sub>3</sub>, Fig. 3, store multimedia messages by media type, col. 5, lines 59-60. Wherein, all types of multimedia messages may be held in a single MMS server, col. 5, lines 65-66); and

a media display unit for presenting the received media data based on the presentation layout information described in said metadata analyzed by said data analyzing unit (col. 7, lines 22-24).

Regarding claim 9, Shinohara further discloses the media receiving apparatus, characterized in that the data receiving unit receives a change command for changing the received metadata as the degree of media importance is changed, and the data analyzing unit interprets said change command received by said data receiving unit, and updates said received metadata (col. 7, lines 22-50).

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Cecile Vo/ whose telephone number is 571-270-3031. The examiner can normally be reached on Mon - Thu (8:30AM - 6:00PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ali can be reached on 571-272-4105. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 02, 2008

/HPham/

/Cecile Vo/  
Patent Examiner  
Art Unit 2169

  
MOHAMMAD ALI  
SUPERVISORY PATENT EXAMINER